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IS THE QUESTION OF LEGAL ETHICS AN ECONOMIC QUESTION?

This question was answered affirmatively at the last meeting of the Alabama Bar Association by the report of its Central Council.

This is a startling admission for any representative agency of the bar to make. If it have any basis in fact it will be accepted with shame and with a set purpose on the part of every lawyer who loves his profession to correct conditions.

The idea that morality in its general aspect is largely an economic virtue had its first public exploitation in the legislative investigations set on foot a few years ago to find out why so many young women became so easily the prey of the white slavers. At that time, it will be remembered that the idea was bitterly resented and it was pointed out that many girls who "went wrong" had never been in financial difficulties and that there was as a rule greater immorality among the middle and wealthy classes, than among the very poor. The general conclusion was that sex morality was a question of education, environment and heredity, economic necessity being only a minor contributory cause.

Of course, it is quite possible, if one views the ethics of the bar as mere code of conventional rules, that economic necessity may constitute a very important factor in determining the causes for any alleged decline in professional morality, but that such necessity should be the controlling factor is quite unthinkable, and, if true, would constitute a reflection on the moral fibre of the men who enter the profession, or on the other hand, would prove that the standards of professional conduct are too severe and impractical under present conditions.

But, returning to the report of the Alabama Central Council, it is there said, after calling attention to a few cases where offending lawyers were disbarred by the court, that:

"After all, the number of disbarments must be relatively small as compared with the instances of malfeasance which must occur so long as the number at the bar is too great for many capable members to make a good living at law—a living at least as ample as that made by any skilled artisan in the neighborhood."

Realizing that this conclusion of the Council rests largely on proof of the existence of an economic crisis in the financial affairs of not a few, but of a large proportion, of practitioners, the committee refers to the reports of other bar associations and to discussions in the Educational Section of the American Bar Association since 1910. The report then goes on to say:

"It has been asserted by New York lawyers speaking before the American Bar Association that the average yearly income of a New York lawyer is only $1000; and the Birmingham members of your council feel confident in asserting that the average professional income of the 370 lawyers recently listed by Mr. Alex. Troy, as practising the profession in Birmingham is nothing like so large as the average of $1000 estimated for New York; whereas the regular wages of a Birmingham plumber is $6 per day, and every coal miner or locomotive engineer can make at least as much in his calling."

It hardly needs any proof that there are too many lawyers. This fact is universally admitted. But there may be some hesitation on the part of many members of the bar in acquiescing in the deduction of the council's report that "the question of maintaining the purity of the bar is therefore *primarily* an economic question."

Admitting, however, that economic necessity is not an unimportant contributory factor in professional delinquencies, we are prepared to accept with some minor qualifications the suggested solution of the Council to restrict the number of lawyers entering the profession. On this point the report says:

"Our position is that the only solution of the problem is to reduce the numbers of the Bar in future by closely restricting the right to get in, and then in the lapse of time the temptation to malpractice will disappear, and an occasional disbarment will be sufficient to warn those who do wrong for the mere love of gain, to pursue their ambition in some other calling."

Accepting, as we do most heartily, the suggestion of the Alabama Central Council of the extreme desirability of raising the entrance requirements of applicants for admission to the bar, our hope for improvement in professional conduct is not based on any humiliating admission that thereby the mere "temptation to malpractice will disappear," but that thereby the men of weak moral fibre who now come to the ranks of practitioners will be discouraged from entering a profession where the emoluments of practice are only for those who make the most thorough intellectual preparation.

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NOTES OF IMPORTANT DECISIONS.

ATTORNEY AND CLIENT—STATEMENT BY ATTORNEY AS MALICIOUS ATTACK ON COURTS.—Re Sherwood, 103 Atl. 42, decided by Pennsylvania Supreme Court, shows that an attorney was disbarred for stating in a case removed to a federal court for prejudice, in diversity of citizenship, that "the five judges of the Luzerne (Pa.) Court are so prejudiced that Stough (his client) could not get a fair trial in our (State) courts." The judgment of the lower court disbarring him was reversed, because such statement was held to be privileged.

The Supreme Court ruled that the fact that the statement was made in a case in a federal court interposed no obstacle to the proceeding for disbarment, but it was said that the statement was privileged. The Court said that "what he said was spoken in the course of a judicial proceeding and was relevant and pertinent to the subject or cause of the inquiry." Is this true?

This statement was not in form argumentative. It was an unequivocal statement of something as a fact. As such a statement it could not be accepted by the court to which it was addressed. It could not add a jot or tittle to what the court needed in the way of information for disposition of the cause before it. If that court gave it any value in this way, it exceeded its power. It, therefore, possessed no relevancy or pertinency to the subject or cause of inquiry before the court.

The Supreme Court thought that there was here a question of "bad taste" and such is not a test in this inquiry. But we think, that the rule that counsel act contrary to professional ethics, when they undertake to state facts as facts, instead of employing argument as argument, is based on something more than taste. It is unethical to do this, because it is usurpation of the role of a witness. It is the interjection of irrelevancy in a cause, and we think the Pennsylvania court failed to utilize an excellent opportunity to characterize — as it should have characterized—an abuse by counsel of a privilege conferred on attorneys in appearing for clients. Instead of doing away with this abuse, it helps to enthrone it.

MARRIAGE—ANNULMENT IN COURTS OF ANOTHER STATE FOR CAUSE NOT CONTRARY TO ITS POLICY.—The case of Kitzman v. Kitzman, 166 N. W. 789, decided by Supreme Court of Wisconsin, is quite remarkable for its many angles concerning its validity at the place of performance, regard for that validity in another State and conformity with policy in the latter State in an action for annulment being involved.

It appears that all the parties lived in Wisconsin and there made application for a marriage license. This being refused they went over to Minnesota where they obtained a license and there a ceremony of marriage was performed, they returning to Wisconsin the same day, and living together as man and wife. At the time the husband had been declared an epileptic from excessive drinking and a guardian was appointed for him. Wisconsin law provided that no insane person or idiot should be capable of contracting marriage, and Minnesota law forbade marriage where either party is epileptic, feeble minded or insane. The alleged wife brought an action in Wisconsin to confirm the marriage, the husband and his guardian being made defendants. The guardian denied validity of the marriage and asked for affirmative relief and that it be declared void. Plaintiff had judgment in the trial court, and this the Supreme Court reversed and gave the affirmative relief prayed for. The action begun by the wife was as by statute of Wisconsin in

cases where validity of marriage is denied or disputed.

The court said: "The trial court should have declared that the marriage ceremony * * * was against the prohibition of the Minnesota statute; was contrary to the public policy of that State; was entered into after concealment or misrepresentation of a material fact had induced the proper official of that State to issue a requisite marriage certificate, and that such violations of the public policy and statutes of Minnesota were of such nature that the pretended ceremony could create no matrimonial status entitled to be recognized as such within the public policy of this State, and said attempted marriage therefore should have been declared null and void."

It is to be stated also that the defendant husband was opposed to the defense set up by his guardian and wanted the Minnesota ceremony confirmed and the relationship of marriage continued. This was thought not to hinder the rendition of the decree that was made, because of the power of the State over the relationship, independently of the wishes of the immediate parties thereto.

If common law marriage is recognized in Wisconsin, the ceremony in Minnesota ought to have been deemed merely an incident and not material. And further, the proof manifest of an attempt to evade Wisconsin officers for their refusal to perform the ceremony ought to have accentuated the view that common law marriage should have its ordinary effect.

Furthermore, it was claimed that the husband was not an epileptic at the time the ceremony was performed. The lower court so found as matter of fact, and the court admits that epilepsy may not be permanent, but says it is a serious mental disease which may injure posterity. But Wisconsin law does not bar an epileptic from marrying, but only insanes.

It seems to us, that this case ought to have been ruled on the theory of the parties being residents of, and domiciled in, Wisconsin, and the resort to Minnesota was matter mote incidental than substantial. The husband and wife holding themselves out as married and desiring to continue so to do should have controlled, especially as there was no policy in Wisconsin avoiding marriage for epilepsy.

REMOVAL OF CAUSE OF ACTION—TEST IN SUITS UNDER FEDERAL EMPLOYERS' LIABILITY ACT AFTER VERDICT.—In Northern Trust Co. v. Grand Trunk Western Ry. Co., 118 N. E. 986, decided by Illinois Supreme Court, the interesting question asises as to question of removability of an action from a state to a federal court, when raised upon motion to remove or upon arrest of judgment.

The declaration in this case stated a cause of action under State law and there being requisite diversity of citizenship it was subject to removal. Upon the trial it was not shown that plaintiff was engaged in interstate commerce, and the case remained as declared upon.

The court in speaking of a prior case in which a demurrer was interposed said: "In that case the question of the sufficiency of the declaration arose on a motion in arrest of judgment, which was overruled by the trial court. The declaration alleged that the defendant has engaged in interstate commerce, but did not allege that the plaintiff was so engaged at the time of his injury. The court held, in substance, that, if tested by demurrer, the declaration might properly have been subject to the objection, but after verdict the rule by which pleadings are construed against the pleader is reversed, and anything necessary to be proved which may fairly be alleged will be regarded as alleged." In the instant case the declaration showing a cause subject to removal and the proof corresponding thereto, application of the ruling in the prior case above referred to was held erroneous and application for removal should have been granted on motion timely made, and the trial of the cause did not change the situation.

LIABILITY OF DRUGGIST FOR NEGLIGENCE IN SALE OR COMPOUNDING OF DRUGS.

Generally, as to Duty and Liability.—The duty owed by druggists to their patrons is to exercise ordinary care. This, however, is ordinary care with reference to the particular business in question, and is fixed in view of the probable results of negligence. The care required of every person is always commensurate with the dangers involved. It is necessary, in order to establish the required degree of prudence, vigilance, and thoughtfulness, to consider the poisonous character of so many of the drugs with which the apothecary deals, and the grave and fatal consequences which may

follow the want of due care. The general customer ordinarily has no definite knowledge concerning the numerous medicines, but must rely implicitly upon the druggist, who holds himself out as having the peculiar learning and skill necessary to a safe and proper discharge of the duty legally required of him.

"Ordinary care with reference to the business of a druggist must therefore be held to signify the highest practicable degree of prudence, thoughtfulness, and vigilance, and the most exact and reliable safeguards, consistent with the reasonable conduct of the business, in order that human life may not constantly be exposed to the danger flowing from the substitution of deadly poisons for harmless medicine."[1]

"All the authorities agree, and the very necessities of the case require, that the highest degree of care known to practical men must be used to prevent injuries from the use of drugs and poisons. It is for these reasons that a druggist is held to a special degree of responsibility. The care must be commensurate with the danger involved. The skill employed must correspond with that superior knowledge of the business which the law requires. The same rule that applies to the common carrier of passengers, and for the same reason —that is, that the life and safety from bodily harm of a passenger is at hazard, and his security due to the care and skill of the carrier alone, and under circumstances where the passenger is powerless to protect himself—applies to the druggist. So, too, the life and health of a customer at the druggist's counter is at hazard, and he is equally dependent for security upon the care and skill of the druggist, and is equally powerless to protect himself."[1a]

"In applying his knowledge and exercising care and diligence, the druggist is bound to give his patrons the benefit of his best judgment; for even in pharmacy there is a class of cases in which judgment and discretion must or may be exercised. The druggist is not necessarily responsible for the results of an error of judgment which is reconcilable and consistent with the exercise of ordinary skill and care. He does not absolutely guarantee that no error shall ever be committed in the discharge of his duties. It is conceivable that there might be an error or mistake on the part of a qualified druggist which would not be held actionable negligence."[2]

He is required to possess a reasonable degree of knowledge and skill with respect to the pharmaceutical duties which he professes to be competent to perform. He is not required to possess the highest degree of knowledge and skill to which the art and science may have attained, nor to have the skill and experience equal to the most eminent in his profession. That reasonable degree of learning and skill which is ordinarily possessed by other druggists in good standing, is the standard of his qualifications.[3]

It has been declared to be the duty of druggists to know the properties of the medicines they sell, and to employ such persons as are capable of discriminating when dealing out medicines to customers.[4]

If the druggist was negligent he is liable, whether or not he was registered.[5]

It has been held that the negligent sale of poison is an indictable offense at common law as well as under statute.[6]

In a case where the druggist gave a customer acetanilid when he called for phosphate of soda, and the customer was injured thereby, it was held that negligence would be presumed; the rule *res ipsa loquitur* applying.[7]

Liability for Negligence of Clerk.—It is elementary that the master who undertakes to perform a service is liable for the negli-

(1) Tombari v. Connors, 85 Conn. 231, 82 Atl. 640, 39 L. R. A. (N. S.) 274; Tremblay v. Kimball, 107 Me. 53, 77 Atl. 405, 29 L. R. A. (N. S.) 900, Ann Cas. 1912C 1215; Falkner v. Birch, 120 Ill. App. 281; Knoefel v. Atkins, 40 Ind. App. 428.

(1a) Knoefel v. Atkins, 40 Ind. App. 428.

(2) Tremblay v. Kimball, 107 Me. 53, 77 Atl. 405, 29 L. R. A. (N. S.) 900, Ann. Cas. 1912C 1215.

(3) Tremblay v. Kimball, 107 Me. 53, 77 Atl. 405, 29 L. R. A. (N. S.) 900, Ann. Cas. 1912C 1215.

(4) Smith v. Hays, 23 Ill. App. 244; Brown v. Marshall, 47 Mich. 576; Fleet v. Hollenkemp, 13 B. Mon. (Ky.) 219.

(5) Coughlin v. Bradbury, 109 Me. 571, 85 Atl. 294.

(6) Thomas v. Winchester, 6 N. Y. 397.

(7) Knoefel v. Atkins, 40 Ind. App. 428.

gence of his servant who, when in the scope of his employment, is performing the services undertaken. This is true as well when the servant is a man of great skill and ability and is performing an act which requires peculiar technical knowledge, as when the servant is a man of no special skill and is doing work of the most ordinary kind. The rule is applicable to a druggist and his clerk.[8]

In a case in which the defendant sought to escape liability on the ground that his clerk was a duly licensed pharmacist, the Court said: "The fact that Cutner, the defendant's clerk who compounded the prescription in question, 'was a competent druggist of experience,' does not relieve the defendant from a claim for damages for injuries sustained on account of negligence of his clerk. 'The most skilful and competent may be, and human experience teaches us will be, sometimes negligent. Hence the fact that one is skilful and competent may prove that he will generally be more careful than the unskilful and incompetent; but it has no tendency to prove due care on a particular occasion.' "[9]

The fact that a druggist, in compliance with a statute, employs a competent and registered pharmacist, does not relieve him from liability for such employe's negligence.[10]

Where a clerk supplied an undiluted form of trikresol, when a one per cent. solution was prescribed, and the action was founded on these facts, it was immaterial that the clerk went further and applied the same to plaintiff's arm, or whether in so doing he was acting in the scope of his employment in so applying it.[11]

Drug for Particular Purpose.—The purchase of a drug for a particular purpose is not the equivalent of purchasing a particular drug. In the former instance the druggist impliedly represents that the drug is suitable for that purpose. So where plaintiff stated to defendant's drug clerk that he wanted to purchase "ten cents worth of corrosive sublimate to apply to the body to kill lice," and the clerk prepared it for that purpose, and the solution proved to be so strong that it caused severe injury, the defendant was held liable therefor. Such case was held analogous to those where a harmful drug is sold for a harmless one.[12]

Failure to Label Poison—Contributory Negligence of Patron.—Plaintiff, a farmer, who at times practiced veterinary surgery, went to defendant's drug store and purchased a bottle of castor oil and some Rochelle salts, which he himself desired to take, and some sulphate of zinc to make a wash to be applied to a colt's foot. The salts and sulphate of zinc were wrapped in separate packages, and the latter was then attached to a bottle containing the oil by a rubber band. When plaintiff reached home, he placed the bottle and the package of sulphate of zinc, the two being still attached, on a shelf in his room, and the other package, containing the Rochelle salts, he placed on a shelf in a cupboard with medicine used by him in his veterinary work. A few days later, plaintiff desired to take a dose of the salts and his wife undertook to prepare the same for him. She used the sulphate of zinc, which was still attached to the bottle of castor oil, and plaintiff was made ill from taking the same. A statute required the druggist to label poisons, and there was evidence that there was no label on the sulphate of zinc, al-

(8) Tombari v. Connors, 85 Conn. 231, 82 Atl. 640, 39 L. R. A. (N. S.) 274; Horst v. Walter, 53 Misc. (N. Y.) 591; Goodwin v. Rowe, 67 Ore. 1, 135 Pac. 171, Ann. Cas. 1915C 416; Moses v. Mathews, 95 Neb. 672, 146 N. W. 920, Ann. Cas. 1915A 698; McCubbin v. Hastings, 27 La. Ann. 713; Norton v. Sewall, 106 Mass. 143; Smith v. Hays, 23 Ill. App. 244.

(9) Tombari v. Connors, 85 Conn. 231, 82 Atl. 640, 39 L. R. A. (N. S.) 274.

(10) Burgess v. Sims Drug Co., 114 Ia. 275, 86 N. W. 307, 54 L. R. A. 364, 89 Am. St. Rep. 359.

(11) Goodwin v. Rowe, 67 Ore. 1, 135 Pac. 171, Ann. Cas. 1915C 416.

(12) Goldberg v. Hegeman & Co., 127 App. Div. 312, 111 N. Y. Supp. 679.

though there was positive evidence that there was. There was a verdict in favor of the plaintiff, which was upheld on appeal. The court sustained an instruction which told the jury that even if they found that defendant had failed to label the drugs, as required by law, yet that fact would not relieve plaintiff from the exercise of reasonable care and caution in using the same to prevent injury to himself, and if they further believed that plaintiff knew he had purchased sulphate of zinc with the Rochelle salts, and through his own negligence and want of reasonable care and caution, took the sulphate of zinc instead of the salts, and was thereby made sick and injured, he could not recover for such injury. The court also declared that a violation of the statute requiring labels to be placed on drugs sold, would constitute negligence *per se*.[13]

Improperly labeling Poison.—In the leading case of Thomas v. Winchester (6 N. Y. 397), the agent of defendant, who manufactured vegetable extracts for medicinal purposes, put up belladonna, a deadly poison, in a jar and labeled it dandelion, and sold it to a druggist in New York, who in turn sold it to another druggist, who put it up for the plaintiff in pursuance of a physician's prescription calling for dandelion. A small portion of the medicine was administered to the plaintiff, and she suffered injury therefrom. It was held that the defendant was responsible for the injury without any privity of contract, because he committed an act of negligence imminently dangerous to the lives of others.

The intestate, who was suffering from diarrhoea, went, at the advice of a friend, to a drug store to procure ten cents worth of "black draught," a comparatively harmless drug, of which he intended to take, as a dose, a small glassful. The druggist's clerk testified that he came to the store and asked the proprietor, the defendant, for ten cents worth of "black drops;" that defendant told him that that was a poison, that the dose was 10 to 12 drops, and advised him to take another mixture; that he refused, and the clerk, by the defendant's directions, gave him two drachms of "black drops" in a bottle, with a label having those two words written on it, but nothing to indicate the dose or that it was poison. The intestate took the bottle home, drank almost all its contents, and died from the effects thereof. It was held error to nonsuit the plaintiff, who sought to recover for intestate's death, but that the case should have been submitted to the jury on the question of whether defendant was not guilty of negligence in failing to place on the bottle a label showing that its contents were poisonous.[14]

Smith v. Hayes[14a] was a case of a druggist selling belladonna for dandelion, and in which he was held liable to the customer, who was injured as a result.

Failure to Dilute.—It has been held to be an act of negligence for a druggist to give one who asks for something to wash out a wound, a solution of carbolic acid so strong that it burns the flesh and turns it black, and that the person to whom it is given is not guilty of contributory negligence in using it.[15]

The plaintiff ordered of the clerk in charge of defendant's drug department, for immediate use, a dose of aromatic spirits of ammonia. She drank the same "and became immediately poisoned, and her mouth and throat and other internal digestive organs became burned and inflamed," etc. An expert witness called by the plaintiff testified that each particular discomfort which plaintiff testified followed upon her taking the mixture could be produced by the dose of aromatic spirits of ammonia, if the dose was not sufficiently

(13) Ankenbrandt v. Joachim, 173 Ill. App. 158.

(14) Wohlfahrt v. Beckert, 27 Hun 74, aff'd in 92 N. Y. 490.

(14a) 23 Ill. App. 244.

(15) Horst v. Walter, 53 Misc. (N. Y.) 591.

diluted. Held, that these facts justified the jury in finding that the clerk who prepared and administered the dose was negligent.[16]

Plaintiff sought to recover from defendants for injuries resulting from the application of undiluted trikresol, and there was evidence that plaintiff and his physician were in defendant's store, which was in sole charge of an unregistered drug clerk; that his physician prescribed verbally a one per cent. solution of trikresol, for an infection on his arm; that the clerk supplied and applied to his arm undiluted trikresol, with the result that he was seriously injured. A judgment in plaintiff's favor was affirmed.[17]

Improperly Mixing Ingredients of Powders.—Actions were brought to recover on account of alleged negligence in compounding a physician's prescription, calling for five grains of phenacetin and five grains of sugar of milk, to be put up in the form of five powders, containing one grain each of the phenacetin and sugar of milk. The prescription had been refilled two or three times, and administered to the little girl, 4 years of age, to whom it was given on this occasion with evil consequences. It was not in controversy that the defendant pursued the usual course in filling this kind of a prescription. He weighed out five grains of each of the required ingredients, placed them in a mortar, stirred them with a pestle "from a minute and a half to two minutes, dumped the mixture upon a prepared paper, graded it up as near as possible, divided it into five equal parts, and then placed them in separate papers and folded them for use, properly marking the box in which they were contained. The evidence showed that this was the appropriate and usual method of filling this kind of a prescription. One of the powders was analyzed, after the child had been given one of them which proved to be an overdose, and it was found to contain, instead of one grain of phenacetin, only six-tenths of a grain; consequently the other four-tenths must have gone into one or more of the other powders.

In upholding verdicts for the plaintiffs, the Court said that, "It was incumbent upon the defendant either to so thoroughly mix the ingredients that each powder would contain substantially the quantity it was intended to have, or to compound each powder separately by weight, which was practicable to do."[18]

Grinding Herbs in Mill Formerly Used to Grind Poison.—A druggist was held liable in damages for injuries to a customer due to taking a dose of medicine made of snake root and Peruvian bark, and in which was a quantity of poisonous drug which had become mixed with the root and bark when they were ground in a machine which had not been cleaned after grinding some of the poisonous drug. Commenting on the general rule of liability in such a case, the court in part said: "If a man who sells fruits, wines and provisions, is bound at his peril, that what he sells for the consumption of others shall be good and wholesome, it may be asked, emphatically, is there any sound reason why this conservative principle of law should not apply with equal if not with greater force to vendors of drugs from a drug store, containing, as from usage may be presumed, a great variety of vegetable and mineral substances of poisonous properties, which if taken as medicine will destroy health and life, and the appearance and qualities of which are known to but few, except they be chemists, druggists or physicians."[19]

Misreading Illegible Prescription.—Action was brought by the plaintiff against the defendant druggist on account of the negligence of a clerk employed by him in

(16) Butterfield v. Snellenburg, 231 Pa. St. 88.

(17) Goodwin v. Rowe, 67 Ore. 1, 135 Pac. 121, Ann. Cas. 1915C 416.

(18) Coughlin v. Bradbury, 109 Me. 571, 85 Atl. 294.

(19) Fleet v. Hollenkemp, 13 B. Mon. (Ky.) 219.

filling a prescription, which, there was evidence, caused her great pain and suffering. The prescription as intended by the doctor who wrote it called for powders to be taken three times a day, each one containing five grains of calumba, with other ingredients. The clerk who compounded the prescription substituted calomel for calumba. The trial court found in favor of plaintiff, and held that the clerk should, by the exercise of due care, have read the prescription as calling for calumba, or at least that there was such doubt as to the correct reading as should have led him to inquire of the doctor.

In sustaining judgment for the plaintiff, the court in part said: "A prescription calling for 120 grains of calomel to be taken in 24 powders, one three times a day, is extraordinary, and, if taken as directed, was liable to be attended by serious results. Cutner (the clerk) was an experienced pharmacist, and, when he delivered the medicine as he had compounded it, could have anticipated that an injury like that which actually occurred would naturally follow. He could have seen from the nationality and appearance of the plaintiff that she knew nothing of the property and uses of calomel. The prescription itself as he read it in connection with the surrounding circumstances excited his suspicion that calomel was not intended. The record does not disclose that he then made a reasonable effort to ascertain whether he might not be mistaken. The defendant contends that the prescription was written in Latin, illegible, and doubtful as to what drug was really intended. Assuming this to be true, it did not lessen the duty of the clerk to be alert to avoid a mistake. If there was any reasonable doubt as to the identical thing ordered, the defendant's clerk should have taken all reasonable precaution to be certain that he did not sell one thing when another had been called for."[20]

(20) Tombari v. Connors, 85 Conn. 231, 82 Atl. 640, 39 L. R. A. (N. S.) 274.

Injurious Hand Lotion.—In an action to recover for personal injuries, the plaintiff testified that she purchased from a clerk in defendant's store a bottle of his "Hand Lotion"; that she took it home and used some of it on her hands that evening; that she was in the habit of keeping some cold cream or something of that nature to put on her hands and lips; that she had used the lotion before and found it a good remedy; that she used it on her hands also the next two nights; that at first her hands did not show anything out of the way, or that the medicine was injuring them, but in two or three days they commenced to get red and burn; that she used some of the lotion on her lips and they became red and sore, and scaled off; that she went to defendant's store and saw him concerning the lotion she had used on her hands and he remarked to her: "I don't see why the medicine should affect your hands in that way, unless it was not shaken up; it is a medicine that should be shaken well before it is poured out of the bottle." There was further evidence tending to show that the injuries resulted from the use of the lotion, and were not eczema, as claimed by defendant; and that plaintiff was confined to her bed for some time, and suffered greatly from such injuries. Judgment in favor of plaintiff was affirmed.[21]

Corrosive Sublimate for Chlorodyne Tablets.—The plaintiff recovered judgment for injuries resulting from the wrongful filling of a prescription by the defendant, by substituting corrosive sublimate tablets for chlorodyne tablets, as called for by the prescription. The defendant was a skilful and competent druggist, and when the tablets were returned to him by the physician, after plaintiff had taken one, he admitted that there had been a mistake, but claimed that at the time the store had been moved one of the firm who owned the store (not sued in this case) had, by mistake, put these

(21) Kelley v. Ross, 165 Mo. App. 475, 148 S. W. 1000.

tablets, which were large and white, into a bottle having on it the manufacturer's label "chlorodyne tablets;" that said member of the firm said to him that he "put those tablets in there," and that when the stock was moved "the tablets got mixed, or that bottle was mixed in with the others." It was contended for defendant that not only were the two bottles alike that were labeled "chlorodyne tablets," but that the tablets in the two bottles were alike in color, size and shape. To the contrary, the physicians testified that the tablets in the two bottles shown him by defendant were wholly and strikingly different in both color and size; that in one were large white tablets, marked "poison" in big letters on the tablets, and in the other were the real chlorodyne tablets, small and very dark green in color. Defendant denied that the word "poison" was stamped on the white tablets, but admitted that the genuine chlorodyne tablets with which he filled the prescription after discovery of the mistake were taken from the other one of the two bottles on the shelf labeled "chlorodyne tablets." There was evidence that chlorodyne tablets are of different colors, but no evidence of white ones. In sustaining judgment for plaintiff, the court in part said: "It is inconceivable that, if he had given thoughtful attention to the matter, he could have failed to note the striking difference in the appearance of the tablets in the two bottles bearing the same label, and the extraordinary, if not unprecedented, fact that in one of them the supposed chlorodyne tablets were white. Yet, so far as appears, no special examination or effort was made to determine the real character of the white tablets, but, apparently without question or hesitation, they were delivered to the plaintiff as harmless medicine."[22]

Antiseptic for Acetanilid Tablets.—The plaintiff was suffering from a severe headache, and sent her 9-year-old son to a neighboring drug store to purchase some acetanilid tablets. The boy called at the drug store and made known his wants to defendant's clerk, who, in lieu of acetanilid tablets, gave him antikamnia tablets. Upon receipt of the antikamnia tablets, plaintiff returned them by W., a young man about 20 years of age, with instructions to advise the clerk to send her acetanilid tablets, as originally requested. W. went to the drug store and delivered the message to the defendant's clerk, again naming the kind of tablets desired, whereupon the clerk refilled the box, wrote something upon it, and gave it to W., who delivered them to the plaintiff. The latter was in a dark room at the time, and owing to the pain in her head, and because she assumed that the tablets were what she had requested, she swallowed one. The tablets were in fact antiseptic tablets and poisonous, and as a result of taking the tablet, plaintiff was made ill, and suffered greatly. Defendant's clerk testified that W. asked for antiseptic tablets; that he explained to W. that they were poisonous; and that he wrote the word "Poison" on the box containing the tablets. W. denied asking for antiseptic tablets and that the clerk made any statement that the tablets were poisonous. It was undisputed that the last tablets had on them in raised letters the word "Poison." It was also undisputed that they were returned in the original box which contained the antikamnia tablets, and that there was written on the box what some of the witnesses said was "Paid" and what some said was "Pois." The box did not have on it the skull and crossed bones. It was held that a verdict for plaintiff was warranted by the evidence, and judgment in her favor was affirmed.[23]

Laudanum for Rhubarb.—One N. was in the employ of P., and was sick with a cold at P's. shop. P. told him to go home, saying that he would get some medicine

(22) Tremblay v. Kimball, 107 Me. 53, 77 Atl. 405, 29 L. R. A. (N. S.) 900, Ann. Cas. 1912C 1215.

(23) French v. De Moss, Tex. Civ. App., 1915, 180 S. W. 1105, 13 N. C. C. A. 63.

and come to his house in the evening and doctor him. That evening P. went to the defendant's apothecary shop and asked for two ounces of rhubarb, and a clerk gave him by mistake, two ounces of laudanum instead of rhubarb. P. then proceeded to N's. house and administered about an ounce of the laudanum to N., from the effects of which he died in five or six hours. It was held that the plaintiff was properly allowed to recover.[24]

Bichloride of Mercury for Triple Bromide Tablets.—The plaintiff testified that he went to defendant's drug store to get a headache remedy, and called for triple bromide tablets. Defendant's clerk delivered to him certain tablets in a box, which he paid for. He noticed the clerk writing on the box, but did not read it at the time. Subsequently plaintiff took one of the tablets, and shortly thereafter felt sick, and, upon going into another drug store, it was discovered that defendant's clerk had given him bichloride of mercury tablets, insteal of triple bromide tablets. The clerk testified that plaintiff asked for bichloride of mercury. It was held that the case was for the jury, and a verdict for plaintiff was sustained.[25]

Atropine for Codeine—Getting Drug from Other Druggists.—In refilling a prescription the defendant, a druggist, used atropine as one of the ingredients instead of codeine. The plaintiff took some of the medicine, with the result that she was made ill, and she sued defendant to recover damages therefor. There was evidence that at the time defendant recompounded the prescription he had no more codeine in stock; that he sent to another druggist for six grains, and upon obtaining it discovered that the druggist to whom he applied had sent him two grains more than he ordered; that defendant then said that it was darker and coarser than that he had previously used, that it did not look like that he had been using, but that "he guessed it was all right"; that thereupon he used it in filling the prescription. Held, that the evidence of defendant's negligence was sufficient to go to the jury. The court stated that whether proof of negligence other than of the mere fact of using atropine for codeine, be necessary to make a *prima facie* case, it was not called upon to determine, and it expressed no opinion relative thereto.[26]

Common Salt for Epsom Salts—Contributory Negligence.—The plaintiff, a dairyman of long experience in dealing with cows and their ailments, applied to defendant druggist for five pounds of Epsom salts and was given five pounds of common salt. He administered two pounds of the common salt to a sick cow, on the theory that it was Epsom salts, and the cow died from the effect of the dose. It was held that the plaintiff was barred of recovery by contributory negligence, the court in part saying: "There is no confusing similarity in appearance of common salt and Epsom salts. Both are household articles in common use, and more or less familiar to all men of ordinary intelligence and experience. Moreover plaintiff was a dairyman of long experience, and quite familiar with the use of both articles in the course of his business. He was skilled in the art of bovine healing by a practice of 30 years upon his own animals and he habitually administered to them Epsom salts for the relief of those digestive disorders to which they were frequently subject."[27]

C. P. BERRY.

St. Louis, Mo.

(24) Norton v. Sewall, 106 Mass. 143.
(25) Moran v. Drake Drug Co., 134 N. Y. Supp. 995.
(26) Faulker v. Birch, 120 Ill. App. 281.
(27) Gorman-Gammil Drug Co. v. Watkins, 185 Ala. 653, 64 So. 350.

FOREIGN CORPORATION—SERVICE OF PROCESS.

PEOPLE'S TOBACCO CO., LIMITED, v. AMERICAN TOBACCO CO.

Argued Jan. 4-7, 1918. Decided March 4, 1918.

38 Sup. Ct. 233.

A foreign tobacco corporation which sold its business within a state pursuant to a trust dissolution decree held not to be "doing business" therein so as to subject it to service of process, although it owned stock in local subsidiary companies and advertised its goods and sent soliciting agents within the state.

Mr. Justice DAY delivered the opinion of the Court.

On January 4, 1912, the People's Tobacco Company, Limited, began suit against the American Tobacco Company in the District Court of the United States for the Eastern District of Louisiana to recover treble damages under section 7 of the Sherman Act of 1890 (Act July 2, 1890, c. 647, 26 Stat. 210 [Comp. St. 1916, § 8829]). On January 5, 1912, service of process was made upon W. R. Irby as manager of the company. On January 16, 1912, the company filed exceptions to the service on the ground that it was a corporation organized under the laws of the State of New Jersey; that it was not found within the Eastern District of Louisiana or in the State of Louisiana, and was not engaged in business there, nor had it an agent therein; that W. R. Irby, upon whom service had been attempted, was not an officer, agent, or employe of the defendant, the American Tobacco Company, or authorized to accept service of process upon it at that time. On January 25, 1912, service was made upon the Assistant Secretary of State of Louisiana. Exceptions to that service upon practically the same grounds were filed by the defendant company. A further service was undertaken on February 2, 1914, on the Secretary of State of Louisiana and like exceptions were filed by the defendant company to that service.

Testimony was taken and upon hearing the District Court held that:

1. W. R. Irby was not the agent of the company at the time of the attempted service, and, therefore, the service upon him did not bring the company into court;

2. That the American Tobacco Company was not doing business in Louisiana at the time of the attempted service;

3. That the attempted service upon the Secretary of State of Louisiana did not bring the defendant corporation into court.

Section 7 of the Sherman Act provides that suits of the character of the one now under consideration may be brought in the district in which the defendant "resides or is found." When applied to a corporation this requirement is the equivalent of saying that it must be present in the district by its officers and agents carrying on the business of the corporation. In this way only can a corporation be said to be "found" within the district. In that manner it may manifest its submission to local jurisdiction and become amenable to local process.

The testimony shows that up to November 30, 1911, the American Tobacco Company had a factory in New Orleans for the manufacture of tobacco and cigarettes known as the W. R. Irby branch of the American Tobacco Company, of which W. R. Irby was manager. Under the law of the state it had filed in the office of the Secretary of State an appointment of W. R. Irby as agent, upon whom service of process might be made.

On November 16, 1911, the Circuit Court of the United States for the Southern District of New York made a decree dissolving the American Tobacco Company. Among other things that decree provided that the American Tobacco Company should convey its W. R. Irby Branch to a company to be formed and known as the Liggett & Myers Tobacco Company. Conveyances were made to carry out this purpose.

The American Tobacco Company, by an instrument executed by Mr. Hill, its vice president, revoked the authority of W. R. Irby as its resident agent, and filed the revocation of authority in the office of the Secretary of State of Louisiana on December 15, 1911. W. R. Irby testified that thereafter he was the manager of the Liggett & Myers Tobacco Company, and that he had no connection whatsoever with the American Tobacco Company, nor had he drawn any salary from that company since December 1, 1911.

It is true that the record discloses some instances in which collections were made upon bills in the name of the Irby Branch of the American Tobacco Company after the revoca-

tion of Mr. Irby's authority as its agent. Most of them were stamped across the face, Liggett & Myers Tobacco Company.

There remained on hand with the Irby Branch at the time of the dissolution a quantity of cigarette paper which was continued to be delivered to purchasers by the employes of the Irby Branch of the Liggett & Myers Tobacco Company upon orders received from the American Tobacco Company, and for its benefit and upon its account. This practically continued until the stock was exhausted, which the testimony shows was within a month after the dissolution, and before the attempted service of process in this case.

There were lodged in the custom house in New Orleans powers of attorney of the American Tobacco Company giving authority to those named therein to do what was necessary to make out export papers on behalf of the company. These powers of attorney do not appear to have been revoked, and existed after the service of process. The defendant company issued circulars subsequent to the time it was served with process in this suit; it also advertised in New Orleans newspapers.

A consideration of all the testimony leads us to the conclusion that the American Tobacco Company undertook in good faith to carry out the decree of dissolution, and to take that company out of business in the State of Louisiana. It is true, as found by the District Court, that at the time of the service, and thereafter, the American Tobacco Company was selling goods in Louisiana to jobbers, and sending its drummers into that State to solicit orders of the retail trade, to be turned over to the jobbers, the charges being made by the jobbers to retailers. It further appears that these agents were not domiciled in the State, and did not have the right or authority to make sales on account of the defendant company, collect money, or extend credit for it. It also appears that the American Tobacco Company owned stock in other companies which owned stock in companies carrying on the tobacco business in the State of Louisiana. With these facts in mind we come to a consideration of the proper disposition of the case.

We agree with the District Court that Irby at the time of the attempted service upon him was not the authorized agent of the American Tobacco Company. On December 1, 1911, the American Tobacco Company conveyed its Irby Branch to the Liggett & Myers Tobacco Company. On the same day W. R. Irby, who had been the designated agent of the defendant company, resigned as a director of the American Tobacco Company, and ceased to remain in its employment. On December 5, 1911, the power of attorney was revoked as we have hereinbefore stated, by the company filing an instrument of revocation in the office of the Secretary of the State of Louisiana; it is true that the revocation was by one of the vice presidents of the company and was attested by the seal of the corporation. But we are not impressed with the argument that this revocation was ineffectual because not sanctioned by formal action of the board of directors of the company. The vice president seems to have had authority in the matter. Apparently he acted with the knowledge and acquiescence of the corporation, and was carrying into effect the decree of dissolution.

Upon the broader question, we agree with the District Court that the American Tobacco Company at the time of the attempted service was not doing business within the State of Louisiana. The question as to what constitutes the doing of business in such wise as to make the corporation subject to service of process has been frequently discussed in the opinions of this court, and we shall enter upon no amplication of what has been said. Each case depends upon its own facts. The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted. Phila. & Reading R. R. Co. v. McKibbin, 243 U. S. 264, 37 Sup. Ct. 280, 61 L. Ed. 710; St. Louis & Southwestern R. R. Co. v. Alexander, 227 U. S. 218, 226, 33 Sup. Ct. 245, 57 L. Ed. 486, Ann. Cas. 1915B, 77.

The fact that the company owned stock in the local subsidiary companies did not bring it into the state in the sense of transacting its own business there. Peterson v. Chicago, R. I. & P. R. R. Co., 205 U. S. 354, 27 Sup. Ct. 513, 51 L. Ed. 841; Phila. & Reading R. R. Co. v. McKibbin, 243 U. S. 264, 268, 37 Sup. Ct. 280, 61 L. Ed. 710. As to the continued practice of advertising its wares in Louisiana, and sending its soliciting agents into that state, as above detailed, the agent having no authority beyond solicitation, we think the previous decisions of this court have settled the law to be that such practices did not amount to that doing of business which subjects the corporation to the local jurisdiction for the

purpose of service of process upon it. Green v. C. B. & Q. R. R. Co., 205 U. S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916; Phila. & Reading R. R. Co. v. McKibbin, 243 U. S. 264, 268, 37 Sup. Ct. 280, 61 L. Ed. 710.

The plaintiff in error relies upon International Harvester Co. v. Kentucky, 234 U. S. 579, 34 Sup. Ct. 944, 58 L. Ed. 1479, but in that case the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the State, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Harvester Company amenable to the process of the courts of that State.

As to the attempted service of process upon the Secretary of State of Louisiana under the Louisiana Act of 1904 (Act No. 54 of 1904) as amended 1908 (Act No. 284 of 1908), we understand the Act, as construed by the State Supreme Court, is not applicable to foreign corporations not present within the State and doing business therein at the time of the service, and having as in this case withdrawn from the state and ceased to do business there. Gouner v. Missouri Valley Iron Co., 123 La. 964, 49 South. 657.

We reach the conclusion that the District Court did not err in maintaining the exceptions filed by the defendant company and in quashing the attempted service made upon it.

Judgment affirmed.

NOTE.—*Serving Officer of Corporation Away from Domicile Thereof.*—The instant case does not involve the question set out above, as by the decision it was held merely, that the service was not upon any one who was an officer of defendant corporation at all at the time he was served, nor was he authorized by statute to be served, because the foreign corporation was not then doing business in the state at the time of the alleged service. Whether an officer away from the domicile of his corporation, or, if there, subject to service as an officer of a foreign corporation doing business in the state, can be served elsewhere so as to bind the corporation, is another question.

In McMenany I. & R. E. Co. v. Stillwell Catering Co., 175 Mo. App. 668, 158 S. W. 427, Judge Allen, one of the judges, writing dissenting opinion later adopted by Supreme Court (S. C. v. S. C., 267 Mo. 340, 184 S. W. 467), there was considered the question of the service in another state of an officer of a domestic corporation. In the main opinion it was said as to statute providing for service outside of Missouri where no officer is to be found inside of the state, that the making of such service valid was plainly provided for by statute and this did not conflict with the ruling in Augusta v. Earle, 13 Pet. 519.

Nortoni, J., concurring, said: "I recognize that our laws are without extraterritorial force. * * * My thought on this question is about as follows: It is clear that the defendant corporation was not in California at the time service was made, for it remained in Missouri all of the time. * * * As president of this corporation, Mr. —— may not be regarded in his individual capacity, but rather he is wrapped up in the warp and the woof of the corporation here in Missouri. Though he was in California personally and as an individual, in so far as he represented the corporation he was here in Missouri as well. In other words, he should not be permitted, through utilizing his individuality, by sojourning to California, to separate his existence from the corporation, of which he was president in this state."

In answer to this reasoning, it may be said, the statute to accomplish such a result as this ought to be clear to that intent, and, though it be this, it yet is to be doubted whether or not this is not a carrying of the corporation into another state—at least it carries it there so as to require corporate presence for service. It may be that, so far as the corporation is concerned it might be bound, because this would be a condition of its being chartered. It is true, however, that one state has no power to give its own corporations any existence in another. Admission there may be denied for any reason the other state may think proper.

Missouri's Supreme Court, however, disposed of the case by holding, that statute regarding constructive service had not been complied with, personal service in another state amounting to no more than this constructive service.

In Swann v. Mut. Res. F. L. Assn., 100 Fed. 922, it was held, that where a foreign corporation had been barred from a state, it had no personal presence or existence there, and service on a state officer authorized to be made as long as the corporation remained there was of no effect. But that does not present the precise question in mind. Status considered only related to service in the state. See also St. Clair v. Cox, 106 U. S. 350, 1 Sup. Ct. 356, 27 L. ed. 222.

It was held in Conley v. Alkali Works, 190 U. S. 406, 23 Sup. Ct. 728, 47 L. ed. 1113, that service on an officer of a corporation temporarily within a state is not good service on the corporation. But supppose, as some statutes allow, an officer may not be a resident of the home state of the corporation.

It has been held that, if an officer be within a state on business of the corporation and is there served with process, and the corporation is subject to suit there as doing business, the service is good—especially if the suit refers to a breach of the same contract to which his business in the state pertained. New Haven P. & B. Co. v. Downingham Mfg. Co., 130 Fed. 605.

But casual appearance of an officer in a state does not authorize service upon him. Watkins

L. M. Co. v. Elliott, 62 Kan. 291, 62 Pac. 1004, 84 Am. St. Rep. 385.

But such cases as these refer to foreign corporations doing business or claimed to be doing business in the state where service is made. Our inquiry is as to the validity of service in another state in a suit against a corporation at its home.

Where a corporation was chartered in West Virginia but none of its officers there resided, it was held that a statute providing that non-resident domestic corporations shall appoint state auditor its attorney in fact to accept service for it, service on him is valid. Wylie Permanent Camping Co. v. Lynch, 195 Fed. 386. This was upon the theory that the state had the right to regulate its own corporations. There it was seen, that there was no attempt to serve process at any place outside of the state. The question above suggested is as to distinction between temporary presence in a state and officer residing there.

There can be no reason for contending that a domestic corporation, if its officers cannot be found in the state, publication service may be made, and it might be that a statute could create presumption of service by delivery to an officer either residing or temporarily present, in another state. But to give such service the quality of service of process in and of itself, is not to be admitted. As a substitute for publication service, as to corporation without the state, the same presumptions in its favor, it seems to us may be held good. C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 147.

Collection Agency; Employment; Relation to Client—Accepting employment on regular and habitual recommendation of collection agency; Disapproved, with qualifications.—A is a mercantile, credit, and collection agency engaged in the business of furnishing credit information to its subscribers and collecting their claims without suit. B is A's attorney.

Where A is unsuccessful in collecting claims without suit, it recommends to its subscribers the services of B as a lawyer. It writes a letter in substantially the following form:
"Dear Sir:

We beg to advise you that you claim of $—— against X Y Z & Company cannot be collected without legal proceedings. Our attorney, B, is prepared to handle matters of this sort. If you desire to start suit, we suggest that you communicate direct with him, authorizing him to do so.

Yours very truly,

THE A. COMPANY.

B, if retained in such cases, charges for his services the same fees as he charges other clients (whether or not recommended by the agency). He keeps the entire fee for himself and pays no part of it to A, nor is the amount of his charges against A for professional services reduced on account of professional employment through its recommendation.

If suit is authorized, the relations between B and the client become direct and A's relation to the matter ceases. In cases in which B is retained in the manner outlined above, A makes no charge whatever for its services either to B or to the subscriber.

(1) In the opinion of your committee is there any impropriety in B acting for clients recommended to him under such circumstances?

(2) If the facts are as stated above, except that A does make a charge to the subscriber in matters taken over by B; such charge, however, being only for its own services prior to the taking over of the matter by B, and not being contingent in any way upon the success of B's efforts; would such additional facts affect the propriety of B's actions?

ANSWER No. 147.

The Committee assumes that the collection agency was not organized, nor is it conducted, for the purpose of fostering the interests of the lawyer. (See Q. 47, subdivisions Ib, IIIa, IVa, Va, VIIa.) Upon this assumption, the Committee is of the opinion that, when the need of a lawyer's services arises, an agency may, if requested (and the request be unsolicited) recommend for the handling of the professional matter any lawyer in whom it has confidence, providing the lawyer does not share his fee with the agency, nor pay, directly or indirectly, any consideration for the recommendation. But the regular and habitual recommendation of the lawyer, done with his knowledge and approval, and without any specific request for such recommendation on the part of the patron, has the same quality as any other organized system of solicitation of professional employment, with the single exception that it is free from the taint of being done for compensation.

As to Subdivision 2 of the question, the Committee is of the opinion that the fact that

the collection agency makes a charge for its own services, as stated in the question does not affect the propriety of the practice.

(See also Questions and Answers 4, 68, 81, 98, 117, 125 and 136.)

BAR ASSOCIATION MEETINGS FOR 1918—WHEN AND WHERE TO BE HELD.

American—Cleveland, Ohio, at Hotels Winton and Statler; August 28, 29 and 30.
Arkansas—Little Rock, May 28 and 29.
California—San Jose, June 6, 7 and 8.
Georgia—Tybee Island, May 31, June 1 and 2.
Illinois—Chicago, Hotel La Salle, May 31 and June 1.
Iowa—Des Moines, June 27 and 28.
Mississippi—Jackson, May 1.
New Jersey—Atlantic City, June 14 and 15.
Ohio—Cleveland, Aug. 26 and 27.
Tennessee—Chattanooga, Aug. 7, 8 and 9.
Wisconsin—Racine, June 26, 27 and 28.

BOOKS RECEIVED.

A Manual on Land Registration. With a Full, Complete Annotated Copy of the Land Registration Act of the State of Georgia. By Arthur Gray Powell, LL. D., Atlanta, Ga., Bar; formerly a judge of the Court of Appeals of the State of Georgia; author of Powell on Actions for Land. Atlanta. The Harrison Company. 1917. Price, $6.50. Review will follow.

Lemuel Shaw, Chief Justice of the Supreme Judicial Court of Massachusetts, 1830-1860. By Frederic Hathaway Chase. Boston and New York. Houghton Mifflin Company. 1918. Price, $2.00. Review will follow.

A treatise on the law of Personal Property. By James Schouler, LL.D. Ex-Professor in the Boston University Law School, and author of treatises on "Wills, Executors and Administrators," "The Domestic Relations," "Bailments, including Carriers." Fifth Edition. Albany, N. Y. Matthew Bender & Company. 1918. Price, $7.50. Review will follow.

HUMOR OF THE LAW.

"There is not going to be any more marrying in Indiana," said old Judge Daniels, a crusty old bachelor.

"How is that?" asked his nephew, who had just got married.

"I see the legislature has passed a law forbidding weak-minded persons to marry, and they are the only ones who ever think of doing such a thing."

As old Daniels is rich, both the nephew and his young wife laughed heartily at the wit of the old man.

THE QUESTIONNAIRE.

Please promptly answer, and with care,
The queries in your Questionnaire;
Divorced or single, if wedded tell
The date when tolled the fatal bell;
Give age, condition, weight and race,
And name each blemish—feet or face,
If lame or halt, knock kneed or blind,
Please fully state before it's signed.

If you've had wives, please state how many;
If not, just why you haven't any;
If living with your wife's relation
Then state who rules the home plantation;
Does ma-in-law pay out house rent?
If so, please state to what extent;
Please answer, sir, with utmost care,
'Fore sending in your Questionnaire.

If you've a wife with you to bunk,
State when your clothes went in one trunk;
Here give the total of your boodle,
And state what's wrong with your poor noodle;
Have you flat feet or wheels in head?
Are your beef cattle all corn fed?
How have you lived for twelve months past?
If preacher, state where you starved last.

Have you your last year's taxes paid?
Are you supporting man (or maid)?
If so, is she your wife's relation?
(Be careful here with explanation)
Have you been trained for war's dread strife,
Aside from battles with your wife?
Can you talk Kansas, French or Greek,
And how much English do you speak?

When all have answered and with care,
The queries in the Questionnaire,
Then Uncle Sam will be much wiser,
And all will help to lick the Kaiser.

—Rogers (Ark.) Democrat.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

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Alabama 65, 68
Arkansas 2
California 25, 26, 43, 52, 96
Colorado 36, 45
Georgia 12, 17, 20, 21, 32, 37, 49, 53
Idaho 9
Illinois 1, 28, 30, 44, 63, 75, 77, 94, 95, 98
Indiana 67, 70, 76, 78, 85, 88
Iowa 31, 34, 38, 51, 56, 90, 97
Kansas 7, 14, 35, 54
Kentucky 87
Louisiana 33
Massachusetts ..... 46, 50, 64, 69, 71, 73, 74, 82, 89, 93, 99.
Michigan 4, 19, 72
Minnesota 79, 84
Mississippi 10, 55
New Jersey 3, 47, 48, 59, 86
New Mexico 40
New York ..... 5, 6, 8, 13, 16, 18, 22, 23, 29, 39, 66, 81.
North Carolina 27, 42, 92, 100
North Dakota 11, 58
Oklahoma 41, 91
Oregon 57, 80
South Carolina 61
South Dakota 15, 24
West Virginia 60, 62, 83

1. **Adverse Possession**—Acts of Ownership.—Neither actual occupancy, cultivation, or residence is necessary to constitute actual adverse possesion of land situated so as not to admit of permanent useful improvements, as being under water; continued claim of party, evidenced by public acts of ownership which he would not exercise over property which he did not claim, may constitute actual possession.—Burns v. Curran, Ill., 118 N. E. 750.

2. **Assault and Battery**—Peace Officer.—Act of peace officer who, with others, was pursuing automobile on unjustifiable suspicion that occupants had committed felony, in shooting at car to puncture a tire, was unlawful, subjecting him to prosecution for assault with deadly weapon.—Wiley v. State, Ariz., 170 Pac. 869.

3. **Assignment**—Laches.—Delay of over seven years before attempting to enforce performance of contract to assign to plaintiffs patents for shares of corporate stock held laches barring relief.—Gardner Valve Mfg. Co. v. Halyburton, N. J., 102 Alt. 893.

4.——Personal Right.—A contract between a telegraph company and a railroad company contemplating telegraph company's construction of telegraph line on railroad right of way held assignable, not being personal.—Detroit, T. & I. R. Co. v. Western Union Telegraph Co., Mich., 166 N. W. 494.

5.——Waiver.—Where contractor assigns part of payment to become due when certain work is done, which owner accepts, owner, by advancing money to contractor before such payment becomes due, waives default and becomes immediately liable to assignee.—O'Connor v. Smallwood, N. Y., 169 N. Y. S. 73.

6. **Attorney and Client**—Attorney's Lien.—Attorney has no general lien, for services rendered executor, on estate's assets not in his possession.—In re Cutting's Estate, N. Y., 169 N. Y. S. 205.

7.——Contingent Fee.—Elements entering into value of legal services are ordinarily character and importance of litigation, time and labor necessarily involved, expense incurred in performing services, results obtained, and, where there is such agreement, that recovery was contingent on success.—Epp v. Hinton, Kan., 170 Pac. 987.

8.——Misconduct.—An attorney held not guilty of professional misconduct in inducing client to execute trust deed and agreement for contingent fee, which later developments proved unreasonably large.—In re Roth, N. Y., 169 N. Y. S. 151.

9.——Suspension.—Attorney who defrauded and misled his client into a forfeiture of his rights and who purchased the property involved in hostility to client and who, in subsequent case involving the fraud was directed to make answer and purposely absented himself from state to avoid being called as a witness, would be suspended for two years.—In re Wourms, Idaho, 170 Pac. 919.

10. **Bankruptcy**—Wife as Bankrupt.—Wife's trustee in bankruptcy held not entitled to recover from husband the amount expended by wife for support of herself and children during husband's abandonment of his family when not representing creditors supplying necessities on husband's credit.—McCabe v. Guido, Miss., 77 So. 801.

11. **Banks and Banking**—Corporation Guarantor.—Unless its charter or the statute expressly permits it, a bank has no power to become a guarantor on a note which it does not own, except as it is necessary to dispose of its own paper and securities.—International Harvester Co. of America v. State Bank of Upham, N. D., 166 N. W. 507.

12. **Bills and Notes**—Admissibility of Evidence.—In action on note, exclusion of defendant's evidence that note was executed without consideration by payee and to enable him to indorse it to plaintiff as collateral, and that debt had been fully paid, was error.—Smith v. Downing Co., Ga., 95 S. E. 19.

13.——Counterclaim. — Where payee transferred note to bank before maturity, but when it was not paid at maturity took it and transferred it to plaintiff, maker could counterclaim against note for claim existing when payee took note from bank in view of Code Civ. Proc. § 502, subd. 2.—Woods v. Sizer, N. Y., 169 N. Y. S. 86.

14.——Innocent Purchaser.—A bank which loaned money to customer on his note, secured by note of defendant payable to the customer, as collateral, and extended collateral note, and surrendered principal note after maturity, but before expiration of extension, and took over collateral note without knowledge of any defense thereto, was, as to defendant, an innocent

purchaser.—Farmers' & Merchants' State Bank v. Beal, Kan., 170 Pac. 1007.

15.——Want of Consideration.—Answer alleging that defendant was induced to give note in place of forged note by false representations, and that the new note was given without consideration, held sufficient to raise the issue of want of consideration.—Carter v. Karterud, S. D., 166 N. W. 524.

16. **Carriers of Goods**—Ignorance of Law.—Where railroad carries goods and charges are paid under interstate rate demanding a certain valuation, the shipper cannot, by pleading ignorance of law, schedules, contract, and bill of lading, recover damages upon valuation calling for higher rate.—Dickerson v. Erie R. Co., N. Y., 169 N. Y. S. 5.

17.——Notify Order.—Allegations of petition in interstate carrier's action against surety on consignee's bond to recover amount of judgment paid to consignor "order notify" consignee held not demurrable on ground that they showed a rescission of the delivery made under contract between carrier and consignee.—Draper v. Georgia, F. & A. Ry. Co., Ga., 95 S. E. 16.

18. **Cemeteries**—Right of Burial.—Discontinuance of a family burying ground cannot, for mere commercial reasons, be compelled by persons holding mere private interests against persons having and asserting right of burial.—Clarke v. Keating, N. Y., 169 N. Y. S. 24.

19. **Commerce** — Workmen's Compensation Act.—In view of Workmen's Compensation Act, pt. 6, § 4, no award can be made thereunder against railroad company engaged in intrastate and interstate commerce which accepted act, on account of death of employe engaged in interstate commerce; Congress having exclusively occupied that field by federal Employers' Liability Act.—Carey v. Grand Trunk Western Ry. Co., Mich., 166 N. W. 492.

20. **Constitutional Law**—Sale of Liquors.—Act Nov. 17, 1915 (Acts 1915, Ex. Sess., p. 77), §§ 1, 2, prohibiting under penalty the manufacturing and sale of non-intoxicating liquors or drinks, including near beer, intended as substitutes for alcoholic liquors, does not violate the due process of law clauses, Const. art. 1, § 1, par. 3 (Civ. Code 1910, § 6359), and Const. U. S. Amend. 14 (Civ. Code 1910, § 6700).—Kunsberg v. State, Ga., 95 S. E. 12.

21.——Special Privileges.—Amendment to ordinances regulating keeping of cows, dairies, etc., within city, to prohibit keeping of cows in congested sections where they would impair public health, etc., and to revoke all former permits, did not violate Const. art. 1, § 3, par. 2 (Civ. Code 1910, § 6389), forbidding making of irrevocable grant of special privileges or immunities.—Davis v. City of Savannah, Ga., 95 S. E. 6.

22. **Contracts**—Bribery.—That plaintiff had bribed an employe, thinking him an official of a corporation, and then entered into the contract sued on with the real official, the bribery, not affecting the latter transaction, did not invalidate the contract, under Penal Law, § 439, making it a misdemeanor to bribe or remunerate the employe or agent of another.—Merchants' Line v. Baltimore & O. R. Co., N. Y., 118 N. E. 788.

23.——Performance. — Where plaintiffs contracted to put defendant's automobile in "good running order," putting it in "fair condition" was not performance.—Kehoe v. Newman, N. Y., 169 N. Y. S. 71.

24. **Corporations**—Directors.—In action for money claimed to have been wrongfully paid from time to time by plaintiff's director to defendant to meet losses resulting from speculation, all such payments being entered when made on the corporate books as though the transactions were had directly with plaintiff, plaintiff could not base its right of recovery on ignorance of the other directors of such entries.—Porter v. Hallet & Carey Co., S. D., 166 N. W. 525.

25. **Damages**—Breach of Duty.—One recovering for injury to property through breach of obligation respecting it by another cannot recover for losses directly resulting from his own failure of duty to prevent or minimize loss, but instruction that plaintiff could not recover if he could have done himself what defendant failed to do goes beyond rule.—Ash v. Soo Sing Lung, Cal., 170 Pac. 843.

26. **Dedication**—Estoppel.—That one claiming title to land dedicated for a street paid taxes and erected improvements, or that the county purchased from another adjacent owner a part of the same strip, did not estop the city to assert dedication.—Wheeler v. City of Oakland, Cal., 170 Pac. 864.

27. **Deeds**—Fee Simple Estate.—Deed of land to one "during his natural life and then to the lawful begotten heirs of his body, and also to (his wife) during her widowhood," granted a fee-simple estate.—Daniel v. Harrison, N. C., 95 S. E. 37.

28.——Undue Influence.—To avoid deeds as procured by undue influence, something more than suspicion is required to prove fraud; evidence must be clear and cogent, and leave mind well satisfied allegation is true.—Valbert v. Valbert, Ill., 118 N. E. 738.

29. **Descent and Distribution**—Murder of Intestate.—Where husband murdered his wife and killed himself, his estate is not seised of entire estate in property held by husband and wife as tenants by entirety, although crime was not committed to secure wife's property, and husband's estate, rather than himself, would benefit.—Van Alstyne v. Tuffy, N. Y., 169 N. Y. S. 173.

30. **Divorce**—Cruel and Inhuman Treatment.—Where only finding was that allegations against defendant were true, and charge was cruel and inhuman treatment in that defendant associated with other women and had been unfaithful to his vows, decree for plaintiff was not for adultery or extreme and repeated cruelty under § 1a of the Divorce Act, which would invalidate another marriage made within year.—Powell v. Powell, Ill., 118 N. E. 786.

31.——Habitual Drunkenness.—To entitle the wife to divorce on the ground of habitual drunkenness, the husband must have become an habitual drunkard after the marriage, so that when plaintiff and defendant were divorced, and she remarried him on his promise to drink no more, she was not entitled to a second divorce for drunkenness.—McNabb v. McNabb, Iowa, 166 N. W. 457.

32. **Ejectment**—County Map.—A county map, the authenticity and accuracy of which are not questioned, is admissible in trial of suit for land to identify the land involved, but notations and entries thereon by strangers to the title are inadmissible.—Copeland v. Jordan, Ga., 95 S. E. 13.

33.——Pleading and Evidence.—Allegation in petition in petitory action that defendant claims property and has cut out timber thereon, coupled with implied admission flowing from petitory character of action, was sufficient to show that defendant was in possession.—Treadway v. Poitevent & Favre Lumber Co., La., 77 So. 850.

34. **Exchange of Property**—False Representations.—Representations as to value of land and sufficiency of drainage held to be treated as representations of fact when so intended and understood by defendant living in another state, and not familiar with such land.—Murray Bros. & Ward Land Co. v. Kessey, Iowa, 166 N. W. 460.

35. **False Imprisonment**—False Arrest.—In action for damages for false arrest with attempted justification by proof that plaintiff had knowingly and feloniously received stolen goods, evidence was admissible to prove that on other occasions he had knowingly received stolen goods.—Smith v. Hern, Kan., 170 Pac. 990.

36. **Fixtures**—Machinery. — Where mining lease does not provide against removal of machinery placed on claim by lessee, it does not become part of realty as between lessor and lessee or his attaching creditor.—Foote v. Carroll, Colo., 170 Pac. 954.

37. **Fraud**—Confidential Relation. — Relation of stepmother and stepchild is not confidential one; at least confidential relation does not necessarily exist between stepmother and stepchild. —Ellis v. Hogan, Ga., 95 S. E. 4.

38.——Imputable Knowledge.—Defendants in exchange of properties representing that they knew of their own knowledge that this property cost, and was at the time worth, certain amount, law imputes to them knowledge of falsity of their representation and fraudulent purpose.—Hess v. McCardell, Iowa, 166 N. W. 470.

39.——Misrepresentation.—That defendant, to induce plaintiff to loan $1,000, stated that it would be deposited in bank account of company in which defendant was officer; that it would not be withdrawn without plaintiff's consent or used for salaries or individual purposes; that, being loaned, it was withdrawn and used to pay salaries, etc., and that the note was not paid—was not fraud by misrepresentation, unless when the loan was made defendant intended not to keep his agreement.—Stoltz v. Reynolds, N. Y., 169 N. Y. S. 170.

40. **Frauds, Statute of**—Original Promise.—An original promise, not within the statute of frauds, is one in which the promisor's direct object is to further or promote some purpose or interest of his own, although the incidental effect may be the payment of the debt of another.—Pace v. Springer, N. M., 170 Pac. 879.

41.——Parol Contract.—Subsequent delivery and acceptance of any part of goods or chattels the subject of a parol contract within the statute of frauds (Rev. Laws 1910, § 941), while the contract remains in force takes it out of the statute and validates the entire contract.—Adams v. King, Okla., 170 Pac. 912.

42. **Fraudulent Conveyances**—Sales in Bulk. —Where insolvent debtor sold stock of goods without complying with Revisal 1908, § 964a, applicable to sales in bulk, and creditor elected to treat sale as void for non-compliance with statute, debtor is entitled to claim his personal property exemption in such goods.—Whitmore-Ligon Co. v. Hyatt, N. C., 95 S. E. 38.

43. **Gifts**—Joint Bank Account.—Where an aunt established a joint bank account with her niece amounting to a gift, in which were deposited rentals from her property, and thereafter checked on the account, the inference that the rentals were used by the aunt for her own support being as reasonable as the opposite inference, the finding to that effect will be upheld. —Kelly v. Woolsey, Cal., 170 Pac. 837.

44.——Offer.—Instrument by which plaintiff required trustee to pay him income from his property for his life and on his death to divide it in certain shares among trustor's children was mere offer, and when not accepted by one child never became effective and was revokable. —Sloan v. Sloan, Ill., 118 N. E. 709.

45. **Husband and Wife**—Landlord's Lien.—In view of Rev. St. 1908, § 3021, a wife's baggage is liable to lien for room rent under § 4013, although the husband rents the room.—McDonnell v. Solomon, Colo., 170 Pac. 951.

46.——Presumption.—Ownership by wife of farm on which dog was kept by husband is insufficient to raise inference of joint keeping of dog by wife with husband, thereby to overcome presumption of exercise of dominant authority by husband.—McIntire v. Leland, Mass., 118 N. E. 665.

47. **Indictment and Information**—Disputive "And."—Where an offense may be committed by doing of one of several things, the indictment may, in a single count, group them by using the conjunctive "and" where "or" occurs in the statute, and charge commission of all of them. —State Board of Medical Examiners of New Jersey v. Giedroyc, N. J., 102 Atl. 906.

48. **Injunction**—Damages.—Injury to a street railway company from the interruption of its business while a sewer is being laid is one for which the damages that may be recovered according to legal rules do not furnish adequate compensation, and hence is within the jurisdiction of a court of equity.—Public Service Ry. Co. v. Frazer, N. J., 102 Atl. 890.

49.——Expulsion of Pupil.—Where pupils of city public school with parents' consent, violated a rule by attending moving picture shows on school nights, refusal to enjoin school authorities threatening to enforce the rule by expelling pupils unless they or their parents agreed to obey it, held not error.—Mangum v. Keith, Ga., 95 S. E. 1.

50.——Labor Union.—If labor union notifies employer it will enforce illegal rule, which operates to employer's prejudice he has right to enjoin the union, even in absence of strike or of threats on part of union.—Haverhill Strand Theatre v. Gillen, Mass., 118 N. E. 671.

51. **Insurance**—Accident.—Relative to liability on accident policy from drowning of county engineer in attempting to cross in rowboat flooded river to break ice gorge, held risk was not incident to his office or occupation; code Supplemental Supp. 1915, § 1527s3 et seq.—Rommel v. National Travelers' Benefit Ass'n, Iowa, 166 N. W. 455.

52.——Expiration.—In view of Code Civ. Proc. § 1875, and fact that standard time is uniformly recognized in state, held, that bank and insurer, issuing policy against inside or outside robbery,

contracted with reference to standard time in stipulation as to hours between which custodian of property must be accompanied by guard.—Bank of Fruitvale v. Fidelity & Casualty Co. of New York, Cal., 170 Pac. 852.

53.——Intentional Injury.—In action on accident policy excluding injury "intentionally inflicted upon insured by any other person," averment that deceased was accidentally killed by being stabbed by unknown negro raised no presumption of its truth, but prima facie case would require proof that injury was unforeseen by, and did not result from any misconduct of or provocation by, insured.—Travelers' Ins. Co. of Hartford v. Newsome, Ga., 95 S. E. 4.

54.——Notice of Loss.—Failure of plaintiff bank to give "immediate notice" of loss by reason of cashier's fraud or dishonesty held waived by insurer's denial of liability upon other distinct grounds.—Delaware State Bank v. Colton, Kan., 170 Pac. 992.

55.——Oral Contract.—Oral contract by defendant's general agent, who had authority to write policies, mortgage clauses, and renewals, to substitute mortgage clause in fire policy, was valid.—Hartford Fire Ins. Co. v. J. R. Buckwalter Lumber Co., Miss., 77 So. 798.

56.——Vested Interest.—Interest of designated beneficiary in ordinary life policy, though containing provisions for loan and surrender value, etc., vests on execution and delivery thereof, and unless it authorizes change of beneficiary without his consent insured cannot make such change.—Condon v. New York Life Ins. Co. of New York, Iowa, 166 N. W. 452.

57. **Landlord and Tenant**—Counterclaim.—In rental action, where lessee counterclaimed for damages, evidence that city would remove encroachment if lessor would donate much more valuable portion for street improvement purposes, which he refused to do, resulting in condemnation proceedings, held not to show that lessor unreasonably delayed settling controversy with city.—Schmid v. Thorsen, Ore., 170 Pac. 930.

58.——Seed Sown on Land.—Where plaintiff, suing to recover timothy seed, had leased the land on which it was grown for a cash rental, the lessee had a title to the seed and a right to mortgage it, so that plaintiff could not recover against the mortgagee.—Hopper v. Howard, N. D., 166 N. W. 511.

59. **Livery Stable and Garage Keepers**—Damages.—Where plaintiff's automobile was stored with the owner of a garage at an agreed price for care and storage, and his night man took the automobile for his own purpose and damaged it, there was a breach of contract and plaintiff could recover.—Corbett v. Smeraldo, N. J., 102 Atl. 889.

60. **Mines and Minerals**—Interest in Land.—The term "mineral," used to describe the interest in land created or reserved, prima facie includes petroleum oil and natural gas, unless it appears that the term was employed in a more restricted sense.—Horse Creek Land & Mining Co. v. Midkiff, W. Va., 95 S. E. 26.

61. **Mortgages**—Assumption of Debt.—Grantee of realty is liable, upon contract embraced in his deed whereby he agreed to assume mortgages on property, directly to holders of mortgages he contracted to assume, whether or not his grantee was liable therefor.—South Carolina Ins. Co. v. Kohn, S. C., 95 S. E. 65.

62. **Municipal Corporations**—Abutting Owner.—Where street is opened upon natural grade and dedicated, though not accepted otherwise than by acquiescence, and owner of abutting lot builds with reference thereto, and grade is changed, municipality is liable for injury to lot only as if it were unimproved.—Ray v. City of Huntington, W. Va., 95 S. E. 23.

63.——Building Construction.—It is clearly within police power of city to regulate construction and use of buildings for protection against fire.—Hartman v. City of Chicago, Ill., 118 N. E. 731.

64.——Drainage.—Construction of gutter and catch-basins for drainage of surface water from street into brook by highway surveyor of town did not make brook a "sewer" or "drain" under Rev. Laws, c. 49, as to them.—Blaisdell v. Inhabitants of Town of Stoneham, Mass., 118 N. E. 919.

65.——Electric Lighting Plant.—Municipality authorized to maintain, own and operate electric lighting plant has implied power to dspose of excess electrc current.—McDonald v. Ward, Ala., 77 So. 835.

66.——Excessive Speed.—To drive motor car at rate of 12 miles an hour in fog so dense that driver could not see beyond hood or distinguish another car, although street was illuminated by lanterns about 75 feet apart, is negligence as matter of law.—Albertson v. Ansbacher, N. Y., 169 N. Y. S. 188.

67.——Negligence.—Traveler is not necessarily negligent in passing over public street or sidewalk which he knows to be dangerous, even though on account of darkness he cannot see so as to avoid danger, but he is required to use that degree of care commensurate with known danger.—Diffenderfer v. City of Jeffersonville, Ind., 118 N. E. 836.

68.——Negligence by Inattention. — Where plaintiff knew of defect in sidewalk and its attending danger and her fall was due to her forgetfulness, that it was dark did not excuse her inattention.—City of Birmingham v. Edwards, Ala., 77 So. 841.

69.——Nuisance.—Town is not liable for maintenance of nuisance arising from acquiescence of officers in permitting sale of newspapers and distribution of circulars in streets, though it is reasonably certain papers will be thrown into streets and accumulate where they may be driven by wind.—Delamaine v. Inhabitants of Town of Revere, Mass., 118 N. E. 660.

70.——Ordinary Care.—A person is not guilty of negligence in attempting to pass over a sidewalk which he knows to be dangerous, even though on account of the darkness he cannot see so as to avoid the obstruction, but in such case he must use care commensurate with the danger.—Town of Mooresville v. Spoon, Ind., 118 N. E. 686.

71.——Public Officer.—Officer charged with duties of surveyor of highways is "public officer," and not agent, employe or officer of town, which is not responsible for his acts in diverting surface water from street into culvert.—Blaisdell v. Inhabitants of Town of Stoneham, Mass., 118 N. E. 919.

72. **Master and Servant**—Assumption of Risk.—Under common law carpenter who was in charge of and was building up and taking down frames into which concrete was being poured was in position to know the conditions and cannot recover for fall.—Willis v. Oscar Daniels Co., Mich., 166 N. W. 496.

73.——Causal Connection.—Causal connection held to exist between employment as doorkeeper of refrigerating room and accident causing employe's death; he having drunk muriatic acid from bottles under sink in refrigerator, where he was accustomed to keep bottle of water for drinking use.—In re Osterbrink, Mass., 118 N. E. 657.

74.——Expression of Opinion.—If action of employes in calling their fellow servant "Crazy Banana" can be regarded as expression of opinion as to his insanity by few who used term, it does not amount to general reputation characterizing servant as insane.—Dennis v. Clyde, New England & Southern Lines, Mass., 118 N. E. 903.

75.——Hazardous Occupation.—Under Workmen's Compensation Act, § 3, par. (b), cl. 8, enumerating extra hazardous occupations, and Chicago ordinance stating requirements of hospital building, chief engineer of a seven-story hospital is engaged in an extrahazardous occupation.—Hahnemann Hospital v. Industrial Board of Illinois, Ill., 118 N. E. 767.

76.——Independent Contractor. — Ordinarily, independent contractor, having finished work and it having been accepted by employer, is no longer liable to third person for injuries received as result of defective construction or installation.—Travis v. Rochester Bridge Co., Ind., 118 N. E. 694.

77.——Intoxication.—Intoxication which does not incapacitate the employe from following his occupation does not defeat recovery of compensation, although the intoxication may be a

contributing cause of the injury.—Hahnemann Hospital v. Industrial Board of Illinois, Ill., 118 N. E. 767.

78.——Look and Listen.—Rule requiring traveler or other person about to cross railroad track to look in both directions and to listen for approaching train is not applied in all its strictness to railroad employes, and employe's failure to look and listen may or may not be negligence.—Chicago & E. R. Co. v. Steele, Ind., 118 N. E. 824.

79.——Minimum Wage.—In action to enjoin members of the minimum wage commission from enforcing orders fixing minimum wages not specifically prescribing the period during which employes might be treated as "learners" or "apprentices," the absence of such provisions would not render order void.—Williams v. Evans, Minn., 166 N. W. 504.

80.——Quantum Meruit.—In action at law for wages, wherein plaintiff was required to elect whether to proceed on contract price or for reasonable value of services, recovery may be had upon quantum meruit, although evidence as to express hiring was introduced; stipulated price in such case becoming quantum meruit.—Ton Toy v. John Gong, Ore., 170 Pac. 936.

81.——Scope of Employment.—Where after hours, cigar packer saw a light in factory, entered, and was requested by his employer to deliver cigars, held that he was then acting within scope of his employment, and compensation for his death resulting from fall downstairs might be awarded under Workmen's Compensation Law.—Grieb v. Hammerle, N. Y., 118 N. E. 805.

82.——Workmen's Compensation Act.—Under Workmen's Compensation Act, pt. 3, § 17, employe of independent contractor can secure compensation against subscriber, if he shows he was at work on premises under control of subscriber, or where contractor had agreed to perform particular work, and that injury arose out of employment which was part of subscriber's business, as in case of removal of materials from subscriber's yard to building.—In re Comerford, Mass., 118 N. E. 900.

83. **Negligence**—Common Agency. — Where two parties use a common agency in conduct of their business, they are both liable to a third party injured by negligent or careless construction and maintenance of such agency, even though it is owned by only one of such parties. —Starcher v. South Penn Oil Co., W. Va., 95 S. E. 28.

84.—Proximate Cause.—One dealing in articles inherently dangerous in their intended use must not place them in hands of children of tender years, and if they are sold and injury naturally and proximately results therefrom, seller is liable.—Schmidt v. Capital Candy Co., Minn., 166 N. W. 502.

85. **Principal and Surety**—Accommodation.—An accommodation surety is a favorite of the law, and should be dealt with in the utmost good faith, and is entitled to the strict terms of his engagement, of which the obligor and obligee must take notice.—State v. Adams, Ind., 118 N. E. 680.

86. **Public Service Commissions** — Rates. — Rates charged by public service company may be unjust and unreasonable within P. L. 1911, p. 377, § 16, because too low, as well as because too high.—Collingswood Sewerage Co. v. Borough of Collingswood, N. J., 102 Atl. 901.

87. **Railroads**—Obstructing View.—Defendant railroad was negligent in placing bank of dirt from its track to face of cut and placing on top of such bank board fence obstructing view of those approaching crossing.—Louisville & N. R. Co. v. Treanor's Adm'r, Ky., 200 S. W. 634.

88.——Public Policy.—Contract whereby defendant railway granted to plaintiff street railway right to maintain single track across tracks and right of way of defendant in consideration that plaintiff at its own expense maintain necessary crossings is against public policy, and in violation of Burns' Ann. St. 1914, §§ 5676, 5677.—Vandalia R. Co. v. Ft. Wayne & Northern Indiana Traction Co., Ind., 118 N. E. 839.

89. **Reference**—Prima Facie Evidence.—Adverse auditor's report of unambiguous import is clothed by statute with force of prima facie evidence, and where party offers no evidence in opposition, verdict should be directed in accordance with auditor's finding.—Farnham v. Lenox Motor Car Co., Mass., 118 N. E. 874.

90. **Reformation of Instruments**—Evidence.—Where deceased loaned money to her sons and her executor sued for amount thereof, and sons set up release, instruction that release created mere presumption of payment was improper as tending to belittle marginal entry of record.—Sutherland v. Briggs, Iowa, 166 N. W. 477.

91. **Sales**—Breach of Warranty.—Where warranty that mule trade was "sound and well" was relied upon and mule was accepted and died the following day, court or jury might find that there was a breach of warranty.—Jackson v. Bates, Okla., 170 Pac. 897.

92. **Sheriffs and Constables**—Exemptions.—Where judgment debtor requests sheriff levying execution on personal property to set aside his personal property exemption therein, sheriff is, unless suit is one in forma pauperis, entitled to collect his fees for that purpose from plaintiff judgment creditor before proceeding further.—Whitmore-Ligon Co. v. Hyatt, N. C., 95 S. E. 38.

93. **Specific Performance**—Fraudulent Intent. —In suit for specific performance of contract to reconvey assignable license under patent and a patent, findings that assignments by defendant corporations conveyed all property used in doing business, and were voted in private meeting of two directors, held insufficient to overcome findings of no fraudulent intent.—Feaster v. Feaster Film Feed Co., Mass., 118 N. E. 912.

94. **Taxation**—Inheritance Tax.—State has power to impose inheritance tax either upon beneficiary or property within its jurisdiction, and tax on property within jurisdiction of state, whether belonging to residents or not passing by laws of state to residents, is valid.—Oakman v. Small, Ill., 118 N. E. 775.

95.——Lien.—Although proceedings to condemn 68 feet of a 71-foot lot were pending May 1st, when lien for taxes on real estate attach, and the rental value of the premises was impaired thereby, the lien for taxes attaches to the entire lot.—People v. Price, Ill., 118 N. E. 759.

96. **Time**—Holiday.—Day provided by corporation's by-law for holding annual meeting falling on Sunday, meeting held on following Monday, pursuant to notice, held the lawful regular meeting, under Civ. Code Ariz. 1913, par. 3287, as to time for doing thing "provided to be done" on a holiday.—Saline Valley Salt Co. v. White, Cal., 170 Pac. 820.

97. **Waters and Water Courses**—Wrongful Diversion.—Where a dyke, forming by accumulation of sand under the partition fence, prevented the natural flow of surface water from defendant's land over plaintiff's land, there was no wrongful diversion by defendant in opening the dyke at a natural depression.—Taylor v. Frevert, Iowa, 166 N. W. 474.

98. **Wills**—Adopted Child.—Will devising to adopted daughter certain lands "to have and to hold as her own absolutely," with further provision that should she sell or attempt to sell or mortgage same it should revert to testator's heirs, conveys fee simple estate, and provision against alienation is void.—Davis v. Hutchinson, Ill., 118 N. E. 721.

99.——Insanity.—Evidence is admissible of insanity of blood relatives of testatrix in ancestral line, when her insanity is in question, but is never admitted in aid of proof showing mere weakness of mind or eccentricity; nor does rule permit indiscriminate or unexplained evidence of disease afflicting mental faculties of relatives.—Boston Safe Deposit & Trust Co. v. Bacon, Mass., 118 N. E. 906.

100.——Power of Appointment.—Will giving testator's property to his wife for life with power to control and sell to pay debts and for division equally among testator's five children, but authorizing the wife to bestow the interest of any child on grandchildren, provided that testator's children should receive their support for life, held to devise to wife life estate with power of appointment.—Makely v. Shore, N. C., 95 S. E. 51.